

Please note: This replaces the questions and answers to the previously emailed document on 22 March 2005.

Q: OUR FIRM HAS SENT TO YOU A DETAILED
CERTIFICATION ON HOW WE WILL HAVE A MINIMUM OF 50%
PARTICIPATION WITH EMPLOYEES CURRENTLY WITHIN OUR FIRM.

SINCE WE ARE EXPENDING A LARGE AMOUNT OF TIME AND MONEY
PREPARING THIS PROPOSAL, WE WOULD TO BE INFORMED IF THERE ARE A
MINIMUM OF TWO SMALL BUSINESSES WHICH CAN SATISFY THE 50%
PARTICIPATION AT THIS TIME.

**R: A minimum of two small businesses have submitted unequivocal compliance
with FAR 52.219-14 "Limitations on Subcontracting".**

Q: thank you very much..... these are very critical questions..... which must be
resolved by submission of proposal. to protect USACE from "protest"

WE STILL REQUIRE CLARIFICATION AS TO THE EMPLOYEES OF THE PRIME.

QUESTION 1:

IF THE PRIME IS TO PROVIDE EMPLOYEES WHO ARE GOING TO PERFORM
AT LEAST 50% OF THE ACTUAL WORK, THEN THE EMPLOYEES OF THE
PRIME IDENTIFIED IN THEIR PROPOSAL..... MUST BE "ACTUAL"
EMPLOYEES AS OF THE SUBMISSION DATE OF THE PROPOSAL.

FOR INSTANCE, THE U.S. DEPARTMENT OF LABOR REQUIRES W-4 FORMS
TO BE FILED FOR TAXATION PURPOSES IMMEDIATELY AT THE TIME OF
EMPLOYMENT,
ELSE THE PRIME DOES NOT HAVE AN EMPLOYEE,
..... BUT RATHER SUB-CONTRACTOR OR INDEPENDENT
CONTRACTOR.....AND 1099 TAX FORMS MUST BE FILED.....

..... IF THE W-4 FORMS ARE NOT ON FILED, AND THE PRIME IS CLAIMING
THE INDIVIDUAL AS AN EMPLOYEE..... THEN THERE ARE ISSUES
RELATED TO THE U.S. TREASURY TAX CODE VIOLATIONS CONCERNING
PAYMENT OF FICA AND OTHER FEDERALLY MANDATED TAXES TO BE
PAID BY EMPLOYERS FOR THEIR EMPLOYEES.

IN THE EVENT THAT THE PRIME CANNOT SHOW THAT THEY ARE CAPABLE
OF PERFORMING 50% OF THE WORK WITH THEIR OWN EMPLOYEES, THEN

THAT PRIME DOES NOT HAVE A RESPONSIVE BID AND THEREFORE, THERE PROPOSAL SHOULD BE REJECTED.

FINALLY, ALTHOUGH YOUR RFP STATES THAT THE PRIME MUST HAVE AT LEAST ONE EMPLOYEE ON THE BOARD..... IT IS NOT POSSIBLE FOR A SINGLE EMPLOYEE TO PERFORM 50% OF THE WORK..... THAT SINGLE EMPLOYEE ONLY REPRESENTS % 16.7% OF THE BOARD. EVEN IF OVERHEAD (STAFF SUPPORT) AND PROFIT REPRESENT 15% OF THE COST, AT A MINIMUM A SINGLE EMPLOYEE CAN ONLY SATISFY 31.6% OF THE TOTAL COST OF THE BOARD.

R: Board members submitted as employees of the Prime Consultant must be employees of the selected concern as of the date of contract award.

QUESTION 2: A SINGLE EMPLOYEE OF THE PRIME CANNOT PHYSICALLY PERFORM 50% OF THE WORK, EVEN IF OVERHEAD AND PROFIT ARE INCLUDED IN THE CLACULATION. IT THEREFORE, APPEARS THAT THE PRIME MUST PROVIDE AT A MINIMUM TWO EMPLOYEES ON THE BOARD (33%) IN ORDER TO SATISFY THE 50% RULING.

IT IS IMPORTANT TO CLARIFY THE ABOVE TWO QUESTIONS PRIOR TO SUBMISSION OF THE PROPOSAL DUE ON MARCH 27, 2005 AT 16:00 HRS

R: Modification 7 changed the submission date to March 29, 2005. Modification 7 is states the minimum requirements for this contract. Each Offeror is responsible for compliance with all minimum requirements and all Federal laws and regulations.

Q: QUESTION 1).

CAN THE CORP PROVIDE THE GUIDELINES FOR THE PERCENTAGES OF OVERHEAD AND PROFIT ALLOWED BY FEDERAL FARs FOR THE PROJECT ?

R: In accordance with the Brooks Act, price cannot a consideration in the evaluation of the proposals. It is the Offeror's responsibility to be familiar with all applicable laws and regulations.

Q: WE HAVE ASKED OUR ACCOUNTANTS TO PERFORM A SENSITIVITY ANALYSIS (USING OPTIMIZATION THEORY) ON THE MAXIMUM PERCENTAGE OF THE TOTAL CONTRACT WHICH A SINGLE EMPLOYEE OF THE BOARD CAN PERFORM (+ OH + P). THEIR ANALYSIS INDICATED THAT A SINGLE EMPLOYEE PLUS OVERHEAD AND PROFIT CAN ONLY PERFORM A MAXIMUM OF 41% OF THE WORK. THIS DOES NOT SATISFY THE 50% REQUIREMENT SPECIFIED IN THE SOLICITATION.

..... IT IS THEREFORE, CLEAR THAT A SINGLE EMPLOYEE OF THE PRIME CAN NEVER SATISFY FAR 52.219-14, AND THUS A PROPOSAL WITH ONLY A SINGLE EMPLOYEE OF THE PRIME IS NOT A RESPONSIVE OFFER AND MUST BE REJECTED BY THE CORP

THE 41% I CALCULATION WAS BASED UPON THE FOLLOWING NUMBERS

SINGLE EMPLOYEE OF PRIME: \$250 PER HR X 1000 HR (MAXIMUM ESTIMATE IN RFP) = \$250,000

5 OTHER BOARD MEMBERS, WHO ARE SUB-CONTRACTORS AND/OR INDEPENDENT CONTRACTORS OF THE PRIME:

1 CHAIRMAN 200 HRS PER YEAR @ \$250 = \$50,000
1 BOARD MEMBER 400 HRS PER YR @ \$300 = \$120,000
1 BOARD MEMBER 400 HRS PER YR @ \$200 = \$80,000
1 BOARD MEMBER 500 HRS PER YR @ \$250 = \$125,000
1 BOARD MEMBER 600 HRS PER YR @ \$250 = \$150,000

5 BOARD MEMBERS TOTAL SUB-CONTRACTORS = \$525,000
PRIME EMPLOYEE = \$250,000

TOTAL GROSS COST = \$775,000
15% OH + P = \$116,250

TOTAL INVOICE FOR YEAR 1 = \$891,250

PERCENTAGE OF TOTAL WORK PERFORMED BY A SINGLE EMPLOYEE OF THE PRIME + OH + P = $\$366,260 / \$891,250 = 41\%$

THEREFORE, WE ARE REQUESTING THAT THE SOLICITATION BE MODIFIED TO SAY THAT THE PRIME MUST HAVE AT A MINIMUM TWO EMPLOYEES ON THE BOARD AT THE TIME THAT THEIR PROPOSAL IS SUBMITTED.

R: The request to amend the solicitation to require a minimum of two Prime Consultant employees on the Board of Consultants is denied. The scenario and calculations presented may not represent all possible Offeror business plans. Each Offeror is responsible for compliance with all minimum requirements and all Federal laws and regulations.

Q: Request clarification on Far 52.119-14 Limitations on Subcontracting under a 100% small business set-aside, under an Engineering Services contract, can any portion of the 50% be subcontracted out?

R: No.